

HOUSE BILL No. 1221

DIGEST OF HB 1221 (Updated February 26, 2003 3:31 PM - DI 69)

Citations Affected: IC 13-11; IC 13-14; IC 13-15; IC 13-17; IC 13-18; IC 13-19; noncode.

Synopsis: Various environmental matters. Establishes a permit program for the filling, dredging, and excavating of certain wetlands. Establishes a wetlands mitigation bank program. Establishes criteria for variances from water quality standards that are at least in part the basis of a National Pollutant Discharge Elimination System permit. Adds an economist to the membership of the air pollution control board, water pollution control board, and solid waste management board (boards) as a nonvoting advisory member. Specifies that ex officio members of the boards are nonvoting members. Repeals provisions allowing appointment of a proxy for meetings by ex officio board members. Requires the boards to contract with an individual, a business firm, or a legal firm to act as technical secretary. Allows the boards to contract with an individual or a legal firm to act as legal counsel. Transfers duties from the department of environmental management to the technical secretary.

Effective: Upon passage; July 1, 2003.

Bottorff

January 8, 2003, read first time and referred to Committee on Environmental Affairs. February 27, 2003, amended, reported — Do Pass.



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1221

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-11-2-16.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.3. "Bank", for purposes of IC 13-18-23, means the Indiana wetlands mitigation bank established by IC 13-18-23-1.

SECTION 2. IC 13-11-2-23.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23.4. "Category I wetland", for purposes of IC 13-18-22, means an isolated wetland that supports minimal wildlife habitat and minimal hydrological and recreational functions.

SECTION 3. IC 13-11-2-23.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23.5. "Category II wetland", for purposes of IC 13-18-22, means an isolated wetland that supports moderate wildlife habitat or hydrological and recreational functions.

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1	SECTION 4. IC 13-11-2-23.6 IS ADDED TO THE INDIANA
2	CODE AS A NEW SECTION TO READ AS FOLLOWS
3	[EFFECTIVE JULY 1, 2003]: Sec. 23.6. "Category III wetland", for
4	purposes of IC 13-18-22, means an isolated wetland that supports
5	superior wildlife habitat or hydrological and recreational
6	functions.
7	SECTION 5. IC 13-11-2-29 IS AMENDED TO READ AS
8	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 29. "Clean Water Act",
9	for purposes of IC 13-18-13, IC 13-14-8, and IC 13-18-22, refers to:
0	(1) 33 U.S.C. 1251 et seq.; and
.1	(2) regulations adopted under 33 U.S.C. 1251 et seq.
2	SECTION 6. IC 13-11-2-36.3 IS ADDED TO THE INDIANA
.3	CODE AS A NEW SECTION TO READ AS FOLLOWS
4	[EFFECTIVE UPON PASSAGE]: Sec. 36.3. "Compensatory
.5	mitigation", for purposes of IC 13-18-23, means the:
6	(1) restoration;
7	(2) creation;
8	(3) enlargement; or
9	(4) enhancement;
20	of wetlands to offset or compensate for a loss of wetlands resulting
21	from an authorized discharge of fill materials.
22	SECTION 7. IC 13-11-2-48.5 IS ADDED TO THE INDIANA
23	CODE AS A NEW SECTION TO READ AS FOLLOWS
24	[EFFECTIVE UPON PASSAGE]: Sec. 48.5. "CWA wetland", for
25	purposes of IC 13-18-23, refers to a wetland that is navigable
26	waters under Section 404(a) of the Clean Water Act.
27	SECTION 8. IC 13-11-2-66.8 IS ADDED TO THE INDIANA
28	CODE AS A NEW SECTION TO READ AS FOLLOWS
29	[EFFECTIVE JULY 1, 2003]: Sec. 66.8. "Endangered Species Act",
30	for purposes of IC 13-14-8, refers to:
31	(1) 16 U.S.C. 1531 et seq.; and
32	(2) regulations adopted under 16 U.S.C. 1531 et seq.
33	SECTION 9. IC 13-11-2-91.5 IS ADDED TO THE INDIANA
34	CODE AS A NEW SECTION TO READ AS FOLLOWS
35	[EFFECTIVE JULY 1, 2003]: Sec. 91.5. "Great Lakes system", for
86	purposes of IC 13-14-8, has the meaning set forth in 327
37	IAC 2-1.5-2(42), as in effect January 1, 2003.
88	SECTION 10. IC 13-11-2-112.5 IS ADDED TO THE INDIANA
39	CODE AS A NEW SECTION TO READ AS FOLLOWS
10	[EFFECTIVE JULY 1, 2003]: Sec. 112.5. "Isolated wetland", for
11	purposes of this chapter and IC 13-18-22, means a wetland not

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subject to the jurisdiction of:



1	(1) the United States Environmental Protection Agency; or
2	(2) the United States Army Corps of Engineers.
3	SECTION 11. IC 13-11-2-139.5 IS ADDED TO THE INDIANA
4	CODE AS A NEW SECTION TO READ AS FOLLOWS
5	[EFFECTIVE JULY 1, 2003]: Sec. 139.5. "New Great Lakes
6	discharger", for purposes of IC 13-14-8, has the meaning set forth
7	in 327 IAC 5-1.5-36, as in effect January 1, 2003.
8	SECTION 12. IC 13-11-2-139.8 IS ADDED TO THE INDIANA
9	CODE AS A NEW SECTION TO READ AS FOLLOWS
10	[EFFECTIVE JULY 1, 2003]: Sec. 139.8. "Newly formed wetland",
11	for purposes of IC 13-18-22, means an isolated wetland:
12	(1) in an area that was not a wetland after July 1, 2003; and
13	(2) that was:
14	(A) created by the property owner;
15	(B) restored to improved wetland condition by the
16	property owner;
17	(C) allowed by the property owner to be naturally restored
18	to improved wetland condition; or
19	(D) created by natural or human activities outside the
20	knowledge or control of the property owner.
21	SECTION 13. IC 13-11-2-178.5 IS ADDED TO THE INDIANA
22	CODE AS A NEW SECTION TO READ AS FOLLOWS
23	[EFFECTIVE JULY 1, 2003]: Sec. 178.5. "Recommencing
24	discharger", for purposes of IC 13-14-8, has the meaning set forth
25	in 327 IAC 5-1.5-50, as in effect January 1, 2003.
26	SECTION 14. IC 13-11-2-221.5 IS ADDED TO THE INDIANA
27	CODE AS A NEW SECTION TO READ AS FOLLOWS
28	[EFFECTIVE UPON PASSAGE]: Sec. 221.5. "State regulated
29	wetland", for purposes of IC 13-18-23, means an isolated wetland
30	located in Indiana that is not an exempt wetland.
31	SECTION 15. IC 13-11-2-245.5 IS ADDED TO THE INDIANA
32	CODE AS A NEW SECTION TO READ AS FOLLOWS
33	[EFFECTIVE UPON PASSAGE]: Sec. 245.5. "Volitional wetland",
34	for purposes of IC 13-18-23, means an isolated wetland that:
35	(1) is located on:
36	(A) privately owned land; or
37	(B) publicly owned land;
38	(2) was restored, created, or expanded in the absence of a
39	governmental order, directive, or regulatory requirement
40	concerning the restoration, creation, or enlargement of the
41	wetland; and
42	(3) has not been applied for or used as compensatory



1	mitigation or another regulatory purpose that would have the
2	effect of subjecting the wetland to regulation as waters by:
3	(A) the department; or
4	(B) another governmental entity.
5	SECTION 16. IC 13-11-2-265, AS AMENDED BY P.L.183-2002,
6	SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7	JULY 1, 2003]: Sec. 265. (a) "Waters", for purposes of water pollution
8	control laws and environmental management laws, means:
9	(1) the accumulations of water, surface and underground, natural
10	and artificial, public and private; or
11	(2) a part of the accumulations of water;
12	that are wholly or partially within, flow through, or border upon
13	Indiana.
14	(b) The term "waters" does not include:
15	(1) a water body or wetland described in IC 13-18-22-1(b);
16	(2) a private pond; or
17	(3) an off-stream pond, reservoir, wetland, or other facility built
18	for reduction or control of pollution or cooling of water before
19	discharge. unless the discharge from the pond, reservoir, or
20	facility causes or threatens to cause water pollution.
21	SECTION 17. IC 13-11-2-265.1 IS ADDED TO THE INDIANA
22	CODE AS A NEW SECTION TO READ AS FOLLOWS
23	[EFFECTIVE JULY 1, 2003]: Sec. 265.1. "Wetland activity", for
24	purposes of IC 13-18-22, means the:
25	(1) filling;
26	(2) dredging; or
27	(3) excavation;
28	of an isolated wetland.
29	SECTION 18. IC 13-11-2-265.2 IS ADDED TO THE INDIANA
30	CODE AS A NEW SECTION TO READ AS FOLLOWS
31	[EFFECTIVE JULY 1, 2003]: Sec. 265.2. "Wetlands", for purposes
32	of IC 13-18-22, means those areas that are inundated or saturated
33	by surface or ground water at a frequency and duration sufficient
34	to support, and that under normal circumstances do support, a
35	prevalence of vegetation typically adapted for life in saturated soil
36	conditions.
37	SECTION 19. IC 13-11-2-265.7 IS ADDED TO THE INDIANA
38	CODE AS A NEW SECTION TO READ AS FOLLOWS
39	[EFFECTIVE UPON PASSAGE]: Sec. 265.7. "Wetlands
40	delineation", for purposes of IC 13-18-23, means a technical
41	assessment of whether a wetland exists on an area of land and, if

so, of what type and quality, based on the presence or absence of



1	wetlands characteristics, as determined consistent with the
2	Wetlands Delineation Manual, Technical Report Y-87-1 of the
3	United States Army Corps of Engineers.
4	SECTION 20. IC 13-14-8-8 IS AMENDED TO READ AS
5	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. (a) If a person who
6	is affected by a rule adopted by a board believes that the imposition of
7	the rule would impose an undue hardship or burden upon the person,
8	the person may apply to the commissioner for a variance from the rule
9	under:
10	(1) this section; or
11	(2) section 9 of this chapter if the variance sought is from a
12	water quality standard.
13	(b) The commissioner may hold a public hearing on an application
14	submitted under subsection (a).
15	(c) If the commissioner determines that immediate compliance with
16	the rule would impose an undue hardship or burden upon the applicant,
17	the commissioner, except as provided in section 9 of this chapter, may
18	grant a variance from the rule for any period not exceeding one (1)
19	year.
20	(d) Upon the request of an applicant, the commissioner may renew
21	an expired variance if the commissioner determines that compliance
22	with the rule would continue to impose an undue hardship or burden
23	upon the applicant. Except as provided in section 9 of this chapter,
24	each renewal may be granted for a period not exceeding one (1) year.
25	SECTION 21. IC 13-14-8-9 IS AMENDED TO READ AS
26	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. (a) This section
27	applies to a variance granted under section 8 of this chapter or
28	IC 13-7-7-6 (before its repeal) from a water quality standard that is at
29	least in part the basis of a National Pollutant Discharge Elimination
30	System permit issued under this title.
31	(b) Except as provided in subsections (c) and (d), the
32	commissioner may grant a variance under this section if the
33	applicant for the variance:
34	(1) demonstrates that a decision to grant the variance would
35	comply with:
36	(A) 40 CFR 131.10;
37	(B) 40 CFR 131.12;
38	(C) 40 CFR 131.20; and
39	(D) 40 CFR 131.21; and
40	(2) demonstrates that attaining the water quality standard is
41	not feasible because of at least one (1) of the following:
12	(A) Naturally occurring pollutant concentrations provent



1	the attainment of the water quality standard.
2	(B) Flow conditions or water levels that are:
3	(i) natural;
4	(ii) ephemeral;
5	(iii) intermittent; or
6	(iv) low;
7	prevent the attainment of the water quality standard
8	unless those conditions can be compensated for by the
9	discharge of a sufficient volume of effluent without
10	violating state water conservation requirements.
11	(C) A condition or source of pollution caused by humans
12	prevents the attainment of the water quality standard and:
13	(i) the condition or source of pollution cannot be
14	remedied; or
15	(ii) correcting the condition or source of pollution would
16	cause more environmental damage than leaving the
17	condition or source of pollution in place.
18	(D) Dams, diversions, or other types of hydrologic
19	modifications prevent the attainment of the water quality
20	standard and it is not feasible to:
21	(i) restore the water body to its original condition; or
22	(ii) operate the modification in a way that would result
23	in the attainment of the water quality standard.
24	(E) Physical conditions related to the natural features of
25	the water body and unrelated to chemical water quality,
26	including:
27	(i) the lack of a proper substrate;
28	(ii) cover;
29	(iii) flow;
30	(iv) depth;
31	(v) pools;
32	(vi) riffles; or
33	(vii) similar conditions;
34	prevent the attainment of the aquatic life protection uses.
35	(F) Controls more stringent than those required by
36	Sections 301(b) and 306 of the Clean Water Act:
37	(i) would be necessary to attain the water quality
38	standard; and
39	(ii) if implemented, would result in substantial and
40	widespread economic and social impact.
41	(c) The commissioner may not grant a variance under this
42	section if:



1	(1) water quality standards can be attained by:
2	(A) implementing effluent limits required under Sections
3	301(b) and 306 of the Clean Water Act; and
4	(B) by the implementation of cost effective and reasonable
5	best management practices for nonpoint source control; or
6	(2) the variance:
7	(A) would likely jeopardize the continued existence; or
8	(B) would likely result in the destruction or adverse
9	modification of critical habitat;
10	of an endangered or threatened species listed under Section 4
11	of the Endangered Species Act.
12	(d) The commissioner may grant a variance under this section
13	within the Great Lakes system:
14	(1) to:
15	(A) a new Great Lakes discharger; or
16	(B) a recommencing discharger;
17	only under 327 IAC 2-1.5-17(a); and
18	(2) only if the criteria in 40 CFR 132, Appendix F, Procedure
19	2 are met.
20	Except as provided in subsection (c), a variance from a water quality
21	standard of the water pollution control board under section 8 of this
22	chapter or IC 13-7-7-6 (before its repeal) may be:
23	(e) The commissioner may:
24	(1) granted grant a variance under this section for not more
25	than five (5) years; and
26	(2) renewed renew a variance under this section for not more
27	than five (5) years.
28	(c) (f) A variance: granted under section 8 of this chapter or
29	IC 13-7-7-6 (before its repeal) from a water quality standard that is at
30	least in part the basis of a National Pollutant Discharge Elimination
31	System permit:
32	(1) issued granted under this title; section; and
33	(2) extended under IC 13-15-3-6; or IC 13-7-10-2(e) (before its
34	repeal);
35	remains in effect until the National Pollutant Discharge Elimination
36	System permit expires.
37	(g) To the extent that rules adopted by the water pollution
38	control board are inconsistent with this section, the board shall
39	amend the rules for granting variances under this section.
40	SECTION 22. IC 13-15-1-2 IS AMENDED TO READ AS
41	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The water
42	pollution control board shall establish requirements for the issuance of



I	permits to control water pollution and atomic radiation, including the	
2	following:	
3	(1) Permits to control or limit the discharge of any contaminants	
4	into state waters or into a publicly owned treatment works.	
5	(2) Permits for the construction, installation, or modification of	
6	facilities, equipment, or devices to control or limit any discharge,	
7	emission, or disposal of contaminants into the waters of Indiana	
8	or into a publicly owned treatment works.	
9	(3) Permits for the operation of facilities, equipment, or devices	
.0	to control or limit the discharge, emission, or disposal of any	
.1	contaminants into the waters of Indiana or into a publicly owned	
2	treatment works.	
3	However, the water pollution control board may not require a permit	
4	under subdivision (2) for any facility, equipment, or device	
.5	constructed, installed, or modified as part of a surface coal mining	
6	operation that is operated under a permit issued under IC 14-34.	
7	(b) The water pollution control board shall establish	
8	requirements for the issuance of permits for wetlands activity	
9	under IC 13-18-22 to:	
20	(1) assure no net loss of isolated wetlands in Indiana; and	
21	(2) promote a net gain in high quality functions of wetlands.	
22	SECTION 23. IC 13-15-3-2 IS AMENDED TO READ AS	
23	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A permit issued	
24	under:	
25	(1) this article (except IC 13-15-9);	
26	(2) IC 13-17-11;	
27	(3) IC 13-18-18; or	
28	(4) IC 13-20-1;	
29	may be issued for any period determined by the department to be	
30	appropriate but not to exceed five (5) years.	
31	(b) A permit issued under IC 13-18-22 for wetlands activity may	
32	be issued for any period determined by the department to be	
33	appropriate.	
34	(c) Except as provided in federal law, a valid permit that has been	
35	issued under this chapter that concerns an activity of a continuing	
86	nature may be renewed for a period of not more than ten (10) years as	
37	determined by the department. The board shall adopt rules	
88	implementing this subsection.	
39	(c) (d) The commissioner may delegate authority to issue or deny	
10	permits to a designated staff member.	
1	SECTION 24. IC 13-17-2-2 IS AMENDED TO READ AS	
12.	FOLLOWS [EFFECTIVE JULY 1 2003] Sec. 2. The board consists	



1	of the following eleven (11) twelve (12) members:
2	(1) The following ex officio, nonvoting members:
3	(A) The commissioner of the state department of health.
4	(B) The director of the department of natural resources.
5	(C) The lieutenant governor.
6	(2) The following eight (8) members, who shall be appointed by
7	the governor based on recommendations from representative
8	constituencies:
9	(A) One (1) representative of agriculture.
.0	(B) One (1) representative of manufacturing employed by an
.1	entity that has applied for or received a Title V operating
2	permit.
3	(C) One (1) representative of environmental interests.
4	(D) One (1) representative of labor.
.5	(E) One (1) representative of local government.
.6	(F) One (1) health professional who holds a license to practice
.7	in Indiana.
.8	(G) One (1) representative of small business.
9	(H) One (1) representative of the general public, who cannot
20	qualify to sit on the board under any of the other clauses in this
21	subdivision.
22	An individual appointed under this subdivision must possess
23	knowledge, experience, or education qualifying the individual to
24	represent the entity the individual is being recommended to
25	represent.
26	(3) One (1) nonvoting advisory member who:
27	(A) is an economist; and
28	(B) shall be appointed by the governor.
29	SECTION 25. IC 13-17-2-3 IS AMENDED TO READ AS
30	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than four
31	(4) five (5) of the appointed members of the board may be members of
32	the same political party.
33	SECTION 26. IC 13-17-2-10 IS AMENDED TO READ AS
34	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. Six (6) Five (5)
35	members of the board four (4) of whom must be appointed members of
36	the board, constitute a quorum.
37	SECTION 27. IC 13-17-2-11 IS AMENDED TO READ AS
88	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall
19	annually select:
l0	(1) one (1) of the eight (8) appointed members of the board to
11 12	serve as chairman; and (2) another of the appointed members of the board to serve as vice
L /	LANGINER OF THE ANNOUNTED MEMBERS Of the board to serve as vice



1	chairman.
2	SECTION 28. IC 13-17-2-12 IS AMENDED TO READ AS
3	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall
4	select from a list of three (3) qualified individuals recommended by the
5	governor, contract with:
6	(1) an individual who:
7	(A) is an independent third party; who and
8	(B) is not an employee of the state;
9	(2) a business firm; or
.0	(3) a legal firm;
.1	to serve as technical secretary of the board.
2	(b) During the interim between meetings of the board, The
3	department technical secretary shall do the following:
4	(1) Handle correspondence.
.5	(2) Make or arrange for investigations and surveys.
6	(3) Obtain, assemble, or prepare reports and data as directed by
.7	the board.
8	(c) The technical secretary shall:
9	(4) Review all materials prepared for the board by the department
20	to make any necessary revisions.
21	(5) Serve as a hearing officer as directed by the board.
22	(6) Convene and lead meetings to discuss matters pending
23	before the board.
24	(7) Initiate and manage rulemaking efforts in cooperation
25	with the department.
26	(c) Provisions of this chapter concerning terms of appointment,
27	vacancies, and compensation of appointed board members apply to the
28	· · · · · · · · · · · · · · · · · · ·
29	technical secretary.
	technical secretary. (d) The technical secretary is not a voting member of the board.
30	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS
30 31	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may
30 31 32	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the
30 31 32 33	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with:
30 31 32 33 34	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who:
30 31 32 33 34 35	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and
30 31 32 33 34 35	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or
30 31 32 33 34 35 36 37	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or (2) a legal firm;
30 31 32 33 34 35 36 37	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or (2) a legal firm; to serve as legal counsel.
30 31 32 33 34 35 36 37 38	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or (2) a legal firm; to serve as legal counsel. (b) The legal counsel shall do the following:
30 31 32 33 34 35 36 37 38 39	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or (2) a legal firm; to serve as legal counsel. (b) The legal counsel shall do the following: (1) Advise the board on legal matters or proceedings arising from
30 31 32 33 34 35 36 37 38	technical secretary. (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may select from a list of three (3) qualified individuals recommended by the governor, contract with: (1) an individual who: (A) is an independent third party; who and (B) is not an employee of the state; or (2) a legal firm; to serve as legal counsel. (b) The legal counsel shall do the following:



1	secretary and the department for legal accuracy and sufficiency
2	and direct the technical secretary and the department to make
3	any necessary revisions.
4	(b) (c) Provisions of this chapter concerning terms of appointment,
5	vacancies, and compensation of appointed board members apply to the
6	legal counsel. The legal counsel is not a voting member of the board.
7	SECTION 30. IC 13-18-1-2 IS AMENDED TO READ AS
8	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board
9	consists of the following eleven (11) twelve (12) members:
10	(1) The following ex officio, nonvoting members:
11	(A) The commissioner of the state department of health.
12	(B) The director of the department of natural resources.
13	(C) The lieutenant governor.
14	(2) The following eight (8) members, who shall be appointed by
15	the governor based on recommendations from representative
16	constituencies:
17	(A) One (1) representative of agriculture.
18	(B) One (1) representative of manufacturing employed by an
19	entity that holds an NPDES major permit.
20	(C) One (1) representative of environmental interests.
21	(D) One (1) representative of labor.
22	(E) One (1) representative of local government.
23	(F) One (1) health professional who holds a license to practice
24	in Indiana.
25	(G) One (1) representative of small business.
26	(H) One (1) representative of the general public, who cannot
27	qualify to sit on the board under any of the other clauses in this
28	subdivision.
29	(3) One (1) nonvoting advisory member who:
30	(A) is an economist; and
31	(B) shall be appointed by the governor.
32	(b) An individual appointed under subsection (a)(2) must possess
33	knowledge, experience, or education qualifying the individual to
34	represent the entity the individual is being recommended to represent.
35	SECTION 31. IC 13-18-1-3 IS AMENDED TO READ AS
36	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than four
37	(4) five (5) of the appointed members of the board may be members of
38	the same political party.
39	SECTION 32. IC 13-18-1-9 IS AMENDED TO READ AS
40	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. Six (6) Five (5)
41	members of the board four (4) of whom must be appointed members of
42	the board, constitute a quorum.



1	SECTION 33. IC 13-18-1-11 IS AMENDED TO READ AS
2	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board shall
3	select from a list of three (3) qualified individuals recommended by the
4	governor, contract with:
5	(1) an individual who:
6	(A) is an independent third party; who and
7	(B) is not an employee of the state;
8	(2) a business firm; or
9	(3) a legal firm;
10	to serve as technical secretary of the board.
11	(b) Between meetings of the board, The department technical
12	secretary shall do the following:
13	(1) Handle correspondence.
14	(2) Make or arrange for investigations and surveys.
15	(3) Obtain, assemble, or prepare reports and data as directed by
16	the board.
17	(c) The technical secretary shall:
18	(4) Review all materials prepared for the board by the department
19	to make any necessary revisions.
20	(5) Serve as a hearing officer as directed by the board.
21	(6) Convene and lead meetings to discuss matters pending
22	before the board.
23	(7) Initiate and manage rulemaking efforts in cooperation
24	with the department.
25	(c) Provisions of this chapter concerning terms of appointment,
26	vacancies, and compensation of appointed board members apply to the
27	technical secretary.
28	(d) The technical secretary is not a voting member of the board.
29	SECTION 34. IC 13-18-1-12 IS AMENDED TO READ AS
30	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board may
31	select from a list of three (3) qualified individuals recommended by the
32	governor, contract with:
33	(1) an individual who:
34	(A) is an independent third party; who and
35	(B) is not an employee of the state; or
36	(2) a legal firm;
37	to serve as legal counsel.
38	(b) The legal counsel shall do the following:
39	(1) Advise the board on legal matters or proceedings arising from
40	the exercise of the board's duties.
41 42	(2) Review all materials prepared for the board by the technical
41	secretary and the department for legal accuracy and sufficiency



1	and direct the technical secretary and the department to make
2	any necessary revisions.
3	(b) (c) Provisions of this chapter concerning terms of appointment
4	vacancies, and compensation of appointed board members apply to the
5	legal counsel. The legal counsel is not a voting member of the board.
6	SECTION 35. IC 13-18-3-1 IS AMENDED TO READ AS
7	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The water
8	pollution control board shall adopt rules for the control and prevention
9	of pollution in waters of Indiana with any substance:
10	(1) that is deleterious to:
11	(A) the public health; or
12	(B) the prosecution of any industry or lawful occupation; or
13	(2) by which:
14	(A) any fish life or any beneficial animal or vegetable life may
15	be destroyed; or
16	(B) the growth or propagation of fish life or beneficial animal
17	or vegetable life is prevented or injuriously affected.
18	(b) The board shall adopt rules to establish the period in which
19	the department must act on an application for certification under
20	Section 401 of the Clean Water Act. Until the board adopts rules
21	to establish the period, the department must act on an application
22	not later than one hundred twenty (120) days after the date the
23	application is filed with the department.
24	SECTION 36. IC 13-18-22 IS ADDED TO THE INDIANA CODE
25	AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
26	JULY 1, 2003]:
27	Chapter 22. Wetlands
28	Sec. 1. (a) Except as provided in subsections (b), (c), and (d), a
29	permit is required for wetland activities in an isolated wetland.
30	(b) A permit under subsection (a) is not required for wetland
31	activities in the following:
32	(1) A manmade water body and the wetland fringe of the
33	water body that:
34	(A) serve a beneficial use; and
35	(B) are not constructed to fulfill a wetland regulatory
36	purpose;
37	including storm water retention and detention ponds
38	ornamental ponds, livestock watering ponds, fishing ponds, or
39	ponds constructed for pollution control purposes.
40	(2) A newly formed wetland that is not used for:
41	(A) a compensatory mitigation purpose; or
42	(B) another regulatory purpose.



1	(3) A wetland regulated under a federal agricultural law
2	supervised by the Natural Resource Conservation Service of
3	the United States Department of Agriculture.
4	(4) A Category I wetland smaller than one-half (1/2) acre.
5	(5) A wetland created solely as the result of actions that were
6	taken for a purpose other than creating the wetland.
7	(6) Other wetlands, as established by the board.
8	(c) A permit under subsection (a) is not required for
9	agricultural activities listed under Section 404(f) of the Clean
10	Water Act.
11	(d) A permit under subsection (a) is not required for any activity
12	for which the department of natural resources has approved a plan
13	to minimize, to the extent possible using the best technology
14	currently available, disturbances and adverse impacts on fish and
15	wildlife and related environmental values and to enhance those
16	resources where practicable.
17	Sec. 2. The department shall issue an individual permit to a
18	person for wetland activities in an isolated wetland if:
19	(1) the person meets the requirements of section 3 of this
20	chapter; and
21	(2) the general permit requirements of section 5 of this
22	chapter do not apply.
23	Sec. 3. A person qualifies for an individual permit under section
24	2 of this chapter if the person meets the requirements of the
25	individual permit rule adopted under section 4 of this chapter.
26	Sec. 4. The board shall adopt a rule before July 1, 2005, for the
27	administration of individual permits under this chapter that must
28	include:
29	(1) an application form that includes:
30	(A) the wetland categorization;
31	(B) a wetland delineation;
32	(C) a project description;
33	(D) a description of the acreage subject to the wetland
34	activity; and
35	(E) site photographs;
36	(2) a demonstration that wetland disturbance cannot be
37	avoided;
38	(3) a demonstration that wetland disturbance is minimized;
39	(4) a commitment that water quality in surface waters of the
40	state will not be degraded as the result of the wetland activity;
41	(5) circumstances and conditions for mitigation requirements;
42	(6) the time permitted for the department to make a



1	determination on the application; and
2	(7) a requirement that the department publish notice under
3	IC 5-3-1:
4	(A) of receipt of an application for an individual permit;
5	and
6	(B) that the department will hold a public hearing on the
7	application in the county where the wetland is located if:
8	(i) a person requests a public hearing not later than
9	fifteen (15) days after the date of publication; and
10	(ii) the department determines there is sufficient interest
11	to hold a public hearing.
12	Sec. 5. A person qualifies under a general permit for wetland
13	activity if the wetland activity proposed by the person meets the
14	requirements of the general permit rule adopted under section 6 of
15	this chapter.
16	Sec. 6. The board shall adopt a rule before July 1, 2005, for the
17	administration of general permits under this chapter that must
18	include:
19	(1) procedures for submission to the department of a notice of
20	intent to conduct wetland activity under a general permit that
21	includes:
22	(A) a demonstration that wetland disturbance cannot be
23	avoided;
24	(B) a demonstration that wetland disturbance is
25	minimized; and
26	(C) a proposed mitigation project;
27	(2) a period of not more than thirty (30) days after the
28	$submission\ of\ the\ notice\ of\ intent\ under\ subdivision\ (1)\ during$
29	which the department may review whether the criteria for the
30	general permit are met; and
31	(3) procedures under which the department:
32	(A) may, after a determination under subdivision (2) that
33	the criteria for the general permit are not met, require the
34	person to apply for an individual permit under this
35	chapter; and
36	(B) must provide to the person a written statement of its
37	reasons for the determination under clause (A).
38	Sec. 7. (a) The board shall adopt a rule before July 1, 2005, to
39	establish procedures to:
40	(1) designate specific real property as outstanding state
41	wetlands; and
42	(2) remove real property from the designation under



1	subdivision (1).
2	(b) The rule under subsection (a):
3	(1) may permit designation as outstanding state wetlands only
4	real property that includes:
5	(A) wetlands that are rare and ecologically important; and
6	(B) a suitable buffer area surrounding the wetlands; and
7	(2) must prohibit wetland activity on outstanding state
8	wetlands unless the wetland activity:
9	(A) is temporary; or
.0	(B) is designed to maintain ecologically important wetland
. 1	qualities.
2	(c) If real property is designated under this section as
3	outstanding state wetlands:
4	(1) the real property must be designated as a permanent
.5	conservation easement under IC 32-23-5; and
.6	(2) the department:
.7	(A) shall compensate the owner of the real property for the
.8	loss of development rights to the property; and
.9	(B) if the designation under subdivision (1) results in a
20	reduction of the property tax assessment of the real
21	property, annually pay to the county an amount equal to
22	the resultant reduction of property taxes due and payable
23	on the property during the year.
24	Sec. 8. (a) The department shall create and maintain a registry
25	of newly formed wetlands that maintains documentation that the
26	area was not a wetland at a particular time.
27	(b) The department may charge:
28	(1) a fee of not more than one hundred dollars (\$100) for
29	registration in the registry under subsection (a); and
30	(2) a fee of not more than fifty dollars (\$50) per year to
31	maintain the registration.
32	(c) The department shall use the revenue from the fees under
33	subsection (b) for the operation of the registry under subsection
34	(a).
35	Sec. 9. (a) A requirement for compliance with surface water
36	quality standards is incorporated into each permit under this
37	chapter for the duration of the wetland activity.
88	(b) Noncompliance with the permit is not a violation of water
39	quality standards unless the quality of the water leaving the project
10	area is impaired.
11	SECTION 37. IC 13-18-23 IS ADDED TO THE INDIANA CODE
12	AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE



1	UPON PASSAGE]:
2	Chapter 23. Indiana Wetlands Mitigation Bank Program
3	Sec. 1. The bank program is established to promote the
4	restoration, creation, or enlargement of wetlands that may be used
5	as mitigation credits to offset losses of regulated wetlands
6	occurring as a result of development projects.
7	Sec. 2. (a) Mitigation credits acquired from owners of wetlands
8	registered in the bank under this chapter may be used to provide
9	compensatory mitigation for projects at any location in Indiana
10	involving a discharge of fill materials into:
11	(1) a state regulated wetland; or
12	(2) if the mitigation credits meet applicable eligibility criteria
13	under federal law, a CWA wetland.
14	(b) The application of mitigation credits acquired under this
15	chapter to compensatory mitigation needs associated with a project
16	involving the discharge of fill materials into a state regulated
17	wetland must be consistent with the following:
18	(1) The mitigation credits may be applied regardless of the
19	relative locations of the wetland in the bank on which the
20	credits are based and the state regulated wetland to be filled.
21	(2) The ratio of mitigation credits to the acreage of state
22	regulated wetland to be filled must be:
23	(A) one to one (1:1) if the mitigation credits are based on
24	a wetland of the same general type as the state regulated
25	wetland to be filled;
26	(B) three to one (3:1) if the state regulated wetland being
27	filled is a Category III wetland; or
28	(C) one and one-half to one (1.5:1) in all other cases.
29	(c) For purposes of subsection (b)(2), the general wetland types
30	are:
31	(1) open water/emergent wetlands;
32	(2) scrub/shrub wetlands; and
33	(3) forested wetlands.
34	(d) Any additional conditions determined by the board in rules
35	adopted under subsection (f) must be reasonable, necessary, and
36	consistent with this chapter.
37	(e) The department shall administer the bank program in
38	accordance with this chapter.
39	(f) The board shall adopt procedural rules under IC 4-22-2 and
40	IC 13-14 not later than December 1, 2004, to facilitate:
41	(1) the administration of the bank; and
42	(2) transactions involving mitigation credits for wetlands



1	registered with the bank;
2	consistent with this chapter. Implementation of this chapter may
3	not be delayed while rules are being developed by the board under
4	this subsection.
5	Sec. 3. (a) A wetland must be registered with the bank before
6	mitigation credits based on the wetlands may be sold for use under
7	this chapter. Wetlands that may be registered with the bank
8	include:
9	(1) volitional wetlands existing before the effective date of this
10	chapter; and
11	(2) volitional wetlands restored, created, or enlarged after the
12	effective date of this chapter.
13	(b) To register a wetland with the bank, the owner of the
14	wetland must submit a registration form to the department that:
15	(1) identifies the voluntary wetland by location and acreage;
16	(2) provides the name and address of the owner;
17	(3) states when the restoration, creation, or enlargement of
18	the wetland began;
19	(4) represents that the wetland is not:
20	(A) a state regulated wetland; or
21	(B) a CWA wetland;
22	(5) includes a wetlands delineation report that describes:
23	(A) the type of the wetland;
24	(B) the quality of the wetland, taking into consideration its
25	age, type, and hydrogeologic setting; and
26	(C) the expected stability of the wetland; and
27	(6) includes a one (1) time registration fee in the amount of the
28	lesser of:
29	(i) ten dollars (\$10) per acre; or
30	(ii) one hundred dollars (\$100) per wetland.
31	(c) The department shall provide a form for registration of
32	wetlands with the bank.
33	(d) The department may refuse to register a wetland proposed
34	for the bank if:
35	(1) the quality of the wetland is not reasonably consistent with
36	its age, type, and hydrogeologic setting; or
37	(2) the wetland's features and quality are not stable.
38	(e) The department shall:
39	(1) give written notice of its refusal to register a wetland in the
40	bank to the person that submitted the registration form for
41	the wetland not later than ninety (90) days after the
42	department's receipt of the registration form; and



1	(2) support its refusal with a statement of reasons.
2	If notification of a refusal to register a wetland is not provided as
3	described in this subsection, a wetland for which a registration
4	form is submitted to the department in accordance with this
5	section is considered to be registered in the bank.
6	(f) A property owner may notify the department of intent to
7	register a wetland with the bank before restoration, creation, or
8	enlargement of the wetland.
9	(g) The owner of a wetland that has been registered with the
10	bank may cancel the registration and withdraw the wetland from
11	the bank at any time before mitigation credits are sold under this
12	chapter on the basis of the registered wetland.
13	Sec. 4. (a) A person may acquire wetlands mitigation credits to
14	satisfy compensatory mitigation needs by the purchase of credits
15	at market price from an owner of wetlands acreage registered in
16	the bank. The mitigation credits may be used to provide
17	compensatory mitigation for projects involving a discharge of fill
18	materials into:
19	(1) a state regulated wetland; or
20	(2) if the credits satisfy federal criteria for mitigation banks,
21	a CWA wetland.
22	One (1) unit of credit corresponds to one (1) acre of registered
23	wetlands. Fractional credits may be purchased.
24	(b) A person that purchases wetlands mitigation credits under
25	this section shall do the following:
26	(1) Not later than five (5) days after the date of purchase, give
27	the department a notice of the purchase in writing that
28	includes the following:
29	(A) The name and address of the purchaser.
30	(B) The name and address of the seller.
31	(C) The amount of credits purchased.
32	(D) The registration number and location of the registered
33	wetland corresponding to the credits purchased.
34	(E) The purchase price.
35	(2) Pay a fee of twenty-five dollars (\$25) to the department
36	with respect to each sale of credits of any amount based on a
37	wetland registered with the bank.
38	(c) A registered wetland that is the basis of a sale of mitigation
39	credits under subsection (a) is reclassified as a state regulated
40	wetland when the credits sold correspond to the entire acreage of
41	the registered wetland.

(d) If the sale of credits involves less than the total acreage of



	20
1	the registered wetland:
2	(1) the fraction of the acreage of the registered wetland not
3	committed to a sale of credits remains available for future
4	sale of mitigation credits; and
5	(2) the wetland is reclassified as a transitional registered
6	wetland.
7	(e) A transitional registered wetland is reclassified as a state
8	regulated wetland when the cumulative credits sold with respect to
9	the transitional registered wetland correspond to the entire
10	acreage of the wetland.
11	(f) No action by the department is required to effectuate the
12	reclassification of a wetland under this section.
13	(g) A wetland may not remain in transitional registered wetland
14	status for more than ten (10) years. A transitional registered
15	wetland is reclassified as a state regulated wetland at the end of the
16	ten (10) year period beginning on the date of the initial sale of
17	credits based on the wetland if the full number of potential
18	mitigation credits corresponding to the transitional registered
19	wetland is not sold by the end of that period. If a wetland has been
20	reclassified as a state regulated wetland under this subsection, the
21	owner of the wetland property may continue to sell the credits
22	corresponding to the wetland that remain unsold at the time of the
23	reclassification.
24	(h) A person that has purchased mitigation credits under this
25	section but has not applied the credits to compensatory mitigation
26	requirements for a wetlands development project may resell some
27	or all of the credits to another person. If the owner of a registered
28	wetland redeems mitigation credits previously sold to another
29	person by repurchasing the credits, the amount of redeemed
30	credits is restored to the remaining credit balance in the bank
31	pertaining to the registered wetland.
32	(i) Each owner of a registered wetland shall provide to the
33	department not later than March 1 of each year a summary of
34	transactions involving credits in the registered wetland that
35	occurred during the preceding calendar year.
36	(j) The department shall maintain records on each wetland
37 38	registered in the bank that include:
38 39	(1) the acreage and location of the wetland; (2) the aumulative number of mitigation gradity sold on the
	(2) the cumulative number of mitigation credits sold on the
40	basis of the registered wetland;

(3) the remaining balance of credits available for sale

attributable to the registered wetland;



41

1	(4) the date of each sale of mitigation credits and the number
2	of credits sold; and
3	(5) the name and address of the current owner of each
4	mitigation credit sold on the basis of the registered wetland.
5	SECTION 38. IC 13-19-2-2 IS AMENDED TO READ AS
6	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board
7	consists of thirteen (13) fourteen (14) members as follows:
8	(1) The following ex officio, nonvoting members:
9	(A) The commissioner of the state department of health.
10	(B) The director of the department of natural resources.
11	(C) The lieutenant governor.
12	(2) The following ten (10) members, who shall be appointed by
13	the governor based on recommendations from representative
14	constituencies:
15	(A) One (1) representative of agriculture.
16	(B) One (1) representative of manufacturing.
17	(C) One (1) representative of environmental interests.
18	(D) One (1) representative of labor.
19	(E) One (1) representative of local government.
20	(F) One (1) health professional who holds a license to practice
21	in Indiana.
22	(G) One (1) representative of small business.
23	(H) One (1) representative of the general public, who cannot
24	qualify to sit on the board under any of the other clauses in this
25	subdivision.
26	(I) One (1) representative of the solid waste management
27	industry.
28	(J) One (1) representative of the solid waste management
29	districts.
30	(3) One (1) nonvoting advisory member who:
31	(A) is an economist; and
32	(B) shall be appointed by the governor.
33	(b) An individual appointed under subsection (a)(2) must possess
34	knowledge, experience, or education qualifying the individual to
35	represent the entity the individual is being recommended to represent.
36	SECTION 39. IC 13-19-2-3 IS AMENDED TO READ AS
37	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than five
38	(5) six (6) of the appointed members of the board may be members of
39	the same political party.
40	SECTION 40. IC 13-19-2-8 IS AMENDED TO READ AS
41	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. Seven (7) Six (6)
42	members of the board four (4) of whom must be appointed members of



1	the board, constitute a quorum.
2	SECTION 41. IC 13-19-2-9 IS AMENDED TO READ AS
3	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall
4	annually select:
5	(1) one (1) of the ten (10) appointed members of the board to
6	serve as chairman; and
7	(2) another of the appointed members of the board to serve as vice
8	chairman.
9	SECTION 42. IC 13-19-2-10 IS AMENDED TO READ AS
10	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The board shall
11	select from a list of three (3) qualified persons recommended by the
12	governor, contract with:
13	(1) an individual who:
14	(A) is an independent third party; who and
15	(B) is not an employee of the state;
16	(2) a business firm; or
17	(3) a legal firm;
18	to serve as technical secretary of the board.
19	(b) During the interim between meetings of the board, The
20	department technical secretary shall do the following:
21	(1) Handle correspondence.
22	(2) Make or arrange for investigations and surveys.
23	(3) Obtain, assemble, or prepare reports and data as directed by
24	the board.
25	(c) The technical secretary shall:
26	(4) Review all materials prepared for the board by the department
27	to make any necessary revisions.
28	(5) Serve as a hearing officer as directed by the board.
29	(6) Convene and lead meetings to discuss matters pending
30	before the board.
31	(7) Initiate and manage rulemaking efforts in cooperation
32	with the department.
33	(c) Provisions of this chapter concerning terms of appointment,
34	vacancies, and compensation of appointed board members apply to the
35	technical secretary.
36	(d) The technical secretary is not a voting member of the board.
37	SECTION 43. IC 13-19-2-11 IS AMENDED TO READ AS
38	FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board may
39	select from a list of three (3) qualified persons recommended by the
40	governor, contract with:
41	(1) an individual who:
42	(A) is an independent third party; who and



1	(B) is not an employee of the state; or
2	(2) a legal firm;
3	to serve as legal counsel.
4	(b) The legal counsel shall do the following:
5	(1) Advise the board on legal matters or proceedings arising from
6	the exercise of the board's duties.
7	(2) Review all materials prepared for the board by the technical
8	secretary and the department for legal accuracy and sufficiency
9	and direct the technical secretary and the department to make
.0	any necessary revisions.
.1	(b) (c) Provisions of this chapter concerning terms of appointment,
2	vacancies, and compensation of appointed board members apply to the
.3	legal counsel. The legal counsel is not a voting member of the board.
4	SECTION 44. THE FOLLOWING ARE REPEALED [EFFECTIVE
.5	JULY 1, 2003]: IC 13-17-2-6; IC 13-18-1-4; IC 13-19-2-4.
6	SECTION 45. [EFFECTIVE JULY 1, 2003] (a) The definitions in
7	IC 13-11-2, as amended by this act, apply throughout this
8	SECTION.
9	(b) Before September 1, 2003, the department shall develop and
20	present to the water pollution control board a policy or statement
21	under IC 13-14-1-11.5 that does the following:
22	(1) Requires, consistent with IC 13-18-22, as added by this act,
23	the filing of an application with the department for an
24	individual permit for wetland activity that occurs:
25	(A) after June 30, 2003; and
26	(B) before the effective date of the rules adopted under:
27	(i) IC 13-18-22-4; and
28	(ii) IC 13-18-22-6;
29	both as added by this act.
30	(2) With respect to an application under subdivision (1),
31	establishes:
32	(A) the factors the department will consider in reviewing
33	the application;
34	(B) procedures for:
35	(i) filing of applications;
86	(ii) action by the department; and
37	(iii) appeals of actions by the department; and
88	(C) the period not to exceed one hundred twenty (120) days
39	within which the department must act.
10	(3) Establishes the attributes of categories of isolated wetlands
11	to which the filing requirements of subdivision (1) apply that
12	are consistent with the following:



1	(A) For a Category I wetland, characterized by:
2	(i) hydrologic isolation;
3	(ii) low species diversity;
4	(iii) a predominance of nonnative species, including
5	greater than fifty percent (50%) areal cover for
6	vegetative species;
7	(iv) no significant habitat or wildlife use; and
8	(v) limited potential to achieve beneficial wetlands
9	functions.
10	(B) For a Category II wetland, characterized by:
11	(i) domination by native species but generally without
12	the presence of, or the habitat for, rare, threatened, or
13	endangered species; and
14	(ii) degradation, but with reasonable potential for
15	reestablishing wetlands functions.
16	(C) For a Category III wetland, characterized by:
17	(i) high levels of diversity;
18	(ii) high proportion of native species; and
19	(iii) high functional values.
20	(4) Establishes, consistent with IC 13-18-22, as added by this
21	act, criteria for general permits:
22	(A) comparable to those addressed by nationwide permits
23	under Section 404 of the Clean Water Act; and
24	(B) for wetland activity affecting:
25	(i) Category I wetlands; and
26	(ii) Category II wetlands;
27	smaller than one-half (1/2) acre.
28	(5) Addresses any other matter the department considers
29	necessary to administer the process described in this
30	subsection:
31	(A) after June 30, 2003; and
32	(B) before the effective date of the rules adopted under:
33	(i) IC 13-18-22-4; and
34	(ii) IC 13-18-22-6;
35	both as added by this act.
36	(c) The department's policies or statements under subsection (b)
37	must, to the greatest extent possible, be consistent with
38	IC 13-18-22, as added by this act.
39 40	(d) The department shall, before November 1, 2003, and again
40 41	before November 1, 2004, report to the environmental quality
41 42	service council on the progress of:
42	(1) the development of the policies or statements under



1	subsection (b); and
2	(2) the adoption of rules under:
3	(A) IC 13-15-1-2; and
4	(B) IC 13-18-22.
5	(e) The following expire September 1, 2005:
6	(1) The department's statement or policy under subsection
7	(b).
8	(2) This SECTION.
9	SECTION 46. [EFFECTIVE UPON PASSAGE] (a) The
10	environmental quality service council shall do the following:
11	(1) Monitor the implementation of this act.
12	(2) Review the role of the department of environmental
13	management with respect to action on requests under section
14	401 of the Clean Water Act (33 U.S.C. 1341) for certifications
15	concerning projects subject to permit requirements under
16	section 404 of the Clean Water Act (33 U.S.C. 1344), and
17	recommend whether statutory direction is appropriate or
18	necessary in defining that role.
19	(3) Complete its consideration of the options for statutory
20	definition of "private pond" as applied in the definition of
21	"waters" in IC 13-11-2-265, and recommend an option,
22	including a statement of rationale.
23	(4) Evaluate the tensions between existing programs for
24	wetlands protection and for local drainage, and recommend
25	principles and policies for ameliorating those tensions, taking
26	into consideration the rationale and objectives for both
27	programs.
28	(5) Recommend a framework for overall state policy on
29	wetlands to implement the 1996 Indiana Wetland
30	Conservation Plan with goals, objectives, and responsibilities,
31	including recommendations on:
32	(A) as a long term strategy, the types and functions of
33	wetlands that are valued in particular geographic areas;
34	and
35	(B) the means for restoring, maintaining, and protecting
36	wetlands, including identification of agencies to be involved
37	and the incentives to be offered.
38	(6) Recommend:
39	(A) composition;
40	(B) responsibilities;
41	(C) staffing; and
42	(D) funding;



1	of a permanent state wetlands conservation council.	
2	(7) Evaluate the usefulness of a statute to create an Indiana	
3	wetland conservation commission for the purpose of	
4	coordinating state agency implementation of the state wetland	
5	policy.	
6	(8) Submit its final report on the matters described in the	
7	preceding four subdivisions before November 1, 2003, to:	
8	(A) the governor; and	
9	(B) the executive director of the legislative services agency.	
10	(b) The environmental quality service council shall:	
11	(1) conduct an ongoing evaluation during the period from	
12	July 1, 2003, to November 1, 2006, of the implementation of:	
13	(A) the permit program for wetlands under IC 13-18-22;	
14	and	
15	(B) the Indiana wetlands mitigation bank program under	
16	IC 13-18-23;	
17	both as established under this act;	
18	(2) recommend any adjustments to either program referred	
19	to in subdivision (1) that are considered advisable to improve	
20	the operation and effectiveness of the programs, consistent	
21	with the purpose of providing an efficient permitting process	
22	and enhancing the attainment of an overall goal of no net loss	
23	of wetlands; and	
24	(3) submit its final report on the matters described in this	
25	subsection before November 1, 2005, to:	
26	(A) the governor; and	
27	(B) the executive director of the legislative services agency.	
28	(c) This SECTION expires November 1, 2006.	V
29	SECTION 47. An emergency is declared for this act.	



COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred House Bill 1221, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-16.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.3. "Bank", for purposes of IC 13-18-23, means the Indiana wetlands mitigation bank established by IC 13-18-23-1.

SECTION 2. IC 13-11-2-23.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23.4. "Category I wetland", for purposes of IC 13-18-22, means an isolated wetland that supports minimal wildlife habitat and minimal hydrological and recreational functions.

SECTION 3. IC 13-11-2-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 23.5. "Category II wetland", for purposes of IC 13-18-22, means an isolated wetland that supports moderate wildlife habitat or hydrological and recreational functions.

SECTION 4. IC 13-11-2-23.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 23.6.** "Category III wetland", for purposes of IC 13-18-22, means an isolated wetland that supports superior wildlife habitat or hydrological and recreational functions."

Page 1, line 3, delete "and" and insert ",".

Page 1, line 3, after "IC 13-14-8," insert "and IC 13-18-22,".

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 6. IC 13-11-2-36.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 36.3.** "Compensatory mitigation", for purposes of IC 13-18-23, means the:

- (1) restoration;
- (2) creation;
- (3) enlargement; or
- (4) enhancement;

of wetlands to offset or compensate for a loss of wetlands resulting

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from an authorized discharge of fill materials.

SECTION 7. IC 13-11-2-48.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 48.5. "CWA wetland", for purposes of IC 13-18-23, refers to a wetland that is navigable waters under Section 404(a) of the Clean Water Act.".

Page 1, between lines 16 and 17, begin a new paragraph and insert: "SECTION 10. IC 13-11-2-112.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 112.5. "Isolated wetland", for purposes of this chapter and IC 13-18-22, means a wetland not subject to the jurisdiction of:

- (1) the United States Environmental Protection Agency; or
- (2) the United States Army Corps of Engineers.".

Page 2, between lines 4 and 5, begin a new paragraph and insert: "SECTION 12. IC 13-11-2-139.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 139.8. "Newly formed wetland", for purposes of IC 13-18-22, means an isolated wetland:

- (1) in an area that was not a wetland after July 1, 2003; and
- (2) that was:
 - (A) created by the property owner;
 - (B) restored to improved wetland condition by the property owner;
 - (C) allowed by the property owner to be naturally restored to improved wetland condition; or
 - (D) created by natural or human activities outside the knowledge or control of the property owner.".

Page 2, between lines 9 and 10, begin a new paragraph and insert: "SECTION 14. IC 13-11-2-221.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 221.5. "State regulated wetland", for purposes of IC 13-18-23, means an isolated wetland located in Indiana that is not an exempt wetland.

SECTION 15. IC 13-11-2-245.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 245.5. "Volitional wetland", for purposes of IC 13-18-23, means an isolated wetland that:

- (1) is located on:
 - (A) privately owned land; or
 - (B) publicly owned land;
- (2) was restored, created, or expanded in the absence of a

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governmental order, directive, or regulatory requirement concerning the restoration, creation, or enlargement of the wetland; and

- (3) has not been applied for or used as compensatory mitigation or another regulatory purpose that would have the effect of subjecting the wetland to regulation as waters by:
 - (A) the department; or
 - (B) another governmental entity.

SECTION 16. IC 13-11-2-265, AS AMENDED BY P.L.183-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265. (a) "Waters", for purposes of water pollution control laws and environmental management laws, means:

- (1) the accumulations of water, surface and underground, natural and artificial, public and private; or
- (2) a part of the accumulations of water; that are wholly or partially within, flow through, or border upon Indiana.
 - (b) The term "waters" does not include:
 - (1) a water body or wetland described in IC 13-18-22-1(b);
 - (2) a private pond; or
 - (3) an off-stream pond, reservoir, **wetland**, or **other** facility built for reduction or control of pollution or cooling of water before discharge. unless the discharge from the pond, reservoir, or facility causes or threatens to cause water pollution.

SECTION 17. IC 13-11-2-265.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 265.1.** "Wetland activity", for purposes of IC 13-18-22, means the:

- (1) filling;
- (2) dredging; or
- (3) excavation;

of an isolated wetland.

SECTION 18. IC 13-11-2-265.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 265.2. "Wetlands", for purposes of IC 13-18-22, means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

SECTION 19. IC 13-11-2-265.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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[EFFECTIVE UPON PASSAGE]: Sec. 265.7. "Wetlands delineation", for purposes of IC 13-18-23, means a technical assessment of whether a wetland exists on an area of land and, if so, of what type and quality, based on the presence or absence of wetlands characteristics, as determined consistent with the Wetlands Delineation Manual, Technical Report Y-87-1 of the United States Army Corps of Engineers."

Page 5, after line 3, begin a new paragraph and insert:

"SECTION 22. IC 13-15-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The water pollution control board shall establish requirements for the issuance of permits to control water pollution and atomic radiation, including the following:

- (1) Permits to control or limit the discharge of any contaminants into state waters or into a publicly owned treatment works.
- (2) Permits for the construction, installation, or modification of facilities, equipment, or devices to control or limit any discharge, emission, or disposal of contaminants into the waters of Indiana or into a publicly owned treatment works.
- (3) Permits for the operation of facilities, equipment, or devices to control or limit the discharge, emission, or disposal of any contaminants into the waters of Indiana or into a publicly owned treatment works.

However, the water pollution control board may not require a permit under subdivision (2) for any facility, equipment, or device constructed, installed, or modified as part of a surface coal mining operation that is operated under a permit issued under IC 14-34.

- (b) The water pollution control board shall establish requirements for the issuance of permits for wetlands activity under IC 13-18-22 to:
 - (1) assure no net loss of isolated wetlands in Indiana; and
- **(2)** promote a net gain in high quality functions of wetlands. SECTION 23. IC 13-15-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A permit issued under:
 - (1) this article (except IC 13-15-9);
 - (2) IC 13-17-11;
 - (3) IC 13-18-18; or
 - (4) IC 13-20-1;

may be issued for any period determined by the department to be appropriate but not to exceed five (5) years.

(b) A permit issued under IC 13-18-22 for wetlands activity may



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be issued for any period determined by the department to be appropriate.

- (c) Except as provided in federal law, a valid permit that has been issued under this chapter that concerns an activity of a continuing nature may be renewed for a period of not more than ten (10) years as determined by the department. The board shall adopt rules implementing this subsection.
- (c) (d) The commissioner may delegate authority to issue or deny permits to a designated staff member.

SECTION 24. IC 13-17-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. The board consists of the following eleven (11) twelve (12) members:

- (1) The following ex officio, nonvoting members:
 - (A) The commissioner of the state department of health.
 - (B) The director of the department of natural resources.
 - (C) The lieutenant governor.
- (2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:
 - (A) One (1) representative of agriculture.
 - (B) One (1) representative of manufacturing employed by an entity that has applied for or received a Title V operating permit.
 - (C) One (1) representative of environmental interests.
 - (D) One (1) representative of labor.
 - (E) One (1) representative of local government.
 - (F) One (1) health professional who holds a license to practice in Indiana.
 - (G) One (1) representative of small business.
 - (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.

An individual appointed under this subdivision must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

- (3) One (1) nonvoting advisory member who:
 - (A) is an economist; and
 - (B) shall be appointed by the governor.

SECTION 25. IC 13-17-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than four (4) five (5) of the appointed members of the board may be members of

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the same political party.

SECTION 26. IC 13-17-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. Six (6) Five (5) members of the board four (4) of whom must be appointed members of the board, constitute a quorum.

SECTION 27. IC 13-17-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The governor shall annually select:

- (1) one (1) of the eight (8) appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

SECTION 28. IC 13-17-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board shall select from a list of three (3) qualified individuals recommended by the governor, contract with:

- (1) an individual who:
 - (A) is an independent third party; who and
 - **(B)** is not an employee of the state;
- (2) a business firm; or
- (3) a legal firm;

to serve as technical secretary of the board.

- (b) During the interim between meetings of the board, The department technical secretary shall do the following:
 - (1) Handle correspondence.
 - (2) Make or arrange for investigations and surveys.
 - (3) Obtain, assemble, or prepare reports and data as directed by the board.
 - (c) The technical secretary shall:
 - **(4)** Review all materials prepared for the board by the department to make any necessary revisions.
 - (5) Serve as a hearing officer as directed by the board.
 - (6) Convene and lead meetings to discuss matters pending before the board.
 - (7) Initiate and manage rulemaking efforts in cooperation with the department.
- (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.
- (d) The technical secretary is not a voting member of the board. SECTION 29. IC 13-17-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 13. (a) The board may

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select from a list of three (3) qualified individuals recommended by the governor, contract with:

- (1) an individual who:
 - (A) is an independent third party; who and
 - (B) is not an employee of the state; or
- (2) a legal firm;

to serve as legal counsel.

- **(b)** The legal counsel shall do the following:
 - (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
 - (2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.
- (b) (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 30. IC 13-18-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of the following eleven (11) twelve (12) members:

- (1) The following ex officio, **nonvoting** members:
 - (A) The commissioner of the state department of health.
 - (B) The director of the department of natural resources.
 - (C) The lieutenant governor.
- (2) The following eight (8) members, who shall be appointed by the governor based on recommendations from representative constituencies:
 - (A) One (1) representative of agriculture.
 - (B) One (1) representative of manufacturing employed by an entity that holds an NPDES major permit.
 - (C) One (1) representative of environmental interests.
 - (D) One (1) representative of labor.
 - (E) One (1) representative of local government.
 - (F) One (1) health professional who holds a license to practice in Indiana.
 - (G) One (1) representative of small business.
 - (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.
- (3) One (1) nonvoting advisory member who:
 - (A) is an economist; and
 - (B) shall be appointed by the governor.

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(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 31. IC 13-18-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than four (4) five (5) of the appointed members of the board may be members of the same political party.

SECTION 32. IC 13-18-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. Six (6) Five (5) members of the board four (4) of whom must be appointed members of the board, constitute a quorum.

SECTION 33. IC 13-18-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board shall select from a list of three (3) qualified individuals recommended by the governor, contract with:

- (1) an individual who:
 - (A) is an independent third party; who and
 - **(B)** is not an employee of the state;
- (2) a business firm; or
- (3) a legal firm;

to serve as technical secretary of the board.

- (b) Between meetings of the board, The department technical secretary shall do the following:
 - (1) Handle correspondence.
 - (2) Make or arrange for investigations and surveys.
 - (3) Obtain, assemble, or prepare reports and data as directed by the board.
 - (e) The technical secretary shall:
 - (4) Review all materials prepared for the board by the department to make any necessary revisions.
 - (5) Serve as a hearing officer as directed by the board.
 - (6) Convene and lead meetings to discuss matters pending before the board.
 - (7) Initiate and manage rulemaking efforts in cooperation with the department.
- (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.
- (d) The technical secretary is not a voting member of the board. SECTION 34. IC 13-18-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) The board may select from a list of three (3) qualified individuals recommended by the

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governor, contract with:

- (1) an individual who:
 - (A) is an independent third party; who and
 - (B) is not an employee of the state; or
- (2) a legal firm;

to serve as legal counsel.

- **(b)** The legal counsel shall do the following:
 - (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
 - (2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.
- (b) (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 35. IC 13-18-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The water pollution control board shall adopt rules for the control and prevention of pollution in waters of Indiana with any substance:

- (1) that is deleterious to:
 - (A) the public health; or
 - (B) the prosecution of any industry or lawful occupation; or
- (2) by which:
 - (A) any fish life or any beneficial animal or vegetable life may be destroyed; or
 - (B) the growth or propagation of fish life or beneficial animal or vegetable life is prevented or injuriously affected.
- (b) The board shall adopt rules to establish the period in which the department must act on an application for certification under Section 401 of the Clean Water Act. Until the board adopts rules to establish the period, the department must act on an application not later than one hundred twenty (120) days after the date the application is filed with the department.

SECTION 36. IC 13-18-22 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 22. Wetlands

- Sec. 1. (a) Except as provided in subsections (b), (c), and (d), a permit is required for wetland activities in an isolated wetland.
- (b) A permit under subsection (a) is not required for wetland activities in the following:

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- (1) A manmade water body and the wetland fringe of the water body that:
 - (A) serve a beneficial use; and
 - (B) are not constructed to fulfill a wetland regulatory purpose;

including storm water retention and detention ponds, ornamental ponds, livestock watering ponds, fishing ponds, or ponds constructed for pollution control purposes.

- (2) A newly formed wetland that is not used for:
 - (A) a compensatory mitigation purpose; or
 - (B) another regulatory purpose.
- (3) A wetland regulated under a federal agricultural law supervised by the Natural Resource Conservation Service of the United States Department of Agriculture.
- (4) A Category I wetland smaller than one-half (1/2) acre.
- (5) A wetland created solely as the result of actions that were taken for a purpose other than creating the wetland.
- (6) Other wetlands, as established by the board.
- (c) A permit under subsection (a) is not required for agricultural activities listed under Section 404(f) of the Clean Water Act.
- (d) A permit under subsection (a) is not required for any activity for which the department of natural resources has approved a plan to minimize, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish and wildlife and related environmental values and to enhance those resources where practicable.
- Sec. 2. The department shall issue an individual permit to a person for wetland activities in an isolated wetland if:
 - (1) the person meets the requirements of section 3 of this chapter; and
 - (2) the general permit requirements of section 5 of this chapter do not apply.
- Sec. 3. A person qualifies for an individual permit under section 2 of this chapter if the person meets the requirements of the individual permit rule adopted under section 4 of this chapter.
- Sec. 4. The board shall adopt a rule before July 1, 2005, for the administration of individual permits under this chapter that must include:
 - (1) an application form that includes:
 - (A) the wetland categorization;
 - (B) a wetland delineation;







- (C) a project description;
- (D) a description of the acreage subject to the wetland activity; and
- (E) site photographs;
- (2) a demonstration that wetland disturbance cannot be avoided;
- (3) a demonstration that wetland disturbance is minimized:
- (4) a commitment that water quality in surface waters of the state will not be degraded as the result of the wetland activity;
- (5) circumstances and conditions for mitigation requirements;
- (6) the time permitted for the department to make a determination on the application; and
- (7) a requirement that the department publish notice under IC 5-3-1:
 - (A) of receipt of an application for an individual permit; and
 - (B) that the department will hold a public hearing on the application in the county where the wetland is located if:
 - (i) a person requests a public hearing not later than fifteen (15) days after the date of publication; and
 - (ii) the department determines there is sufficient interest to hold a public hearing.
- Sec. 5. A person qualifies under a general permit for wetland activity if the wetland activity proposed by the person meets the requirements of the general permit rule adopted under section 6 of this chapter.
- Sec. 6. The board shall adopt a rule before July 1, 2005, for the administration of general permits under this chapter that must include:
 - (1) procedures for submission to the department of a notice of intent to conduct wetland activity under a general permit that includes:
 - (A) a demonstration that wetland disturbance cannot be avoided;
 - (B) a demonstration that wetland disturbance is minimized; and
 - (C) a proposed mitigation project;
 - (2) a period of not more than thirty (30) days after the submission of the notice of intent under subdivision (1) during which the department may review whether the criteria for the general permit are met; and
 - (3) procedures under which the department:









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- (A) may, after a determination under subdivision (2) that the criteria for the general permit are not met, require the person to apply for an individual permit under this chapter; and
- (B) must provide to the person a written statement of its reasons for the determination under clause (A).
- Sec. 7. (a) The board shall adopt a rule before July 1, 2005, to establish procedures to:
 - (1) designate specific real property as outstanding state wetlands; and
 - (2) remove real property from the designation under subdivision (1).
 - (b) The rule under subsection (a):
 - (1) may permit designation as outstanding state wetlands only real property that includes:
 - (A) wetlands that are rare and ecologically important; and
 - (B) a suitable buffer area surrounding the wetlands; and
 - (2) must prohibit wetland activity on outstanding state wetlands unless the wetland activity:
 - (A) is temporary; or
 - (B) is designed to maintain ecologically important wetland qualities.
- (c) If real property is designated under this section as outstanding state wetlands:
 - (1) the real property must be designated as a permanent conservation easement under IC 32-23-5; and
 - (2) the department:
 - (A) shall compensate the owner of the real property for the loss of development rights to the property; and
 - (B) if the designation under subdivision (1) results in a reduction of the property tax assessment of the real property, annually pay to the county an amount equal to the resultant reduction of property taxes due and payable on the property during the year.
- Sec. 8. (a) The department shall create and maintain a registry of newly formed wetlands that maintains documentation that the area was not a wetland at a particular time.
 - (b) The department may charge:
 - (1) a fee of not more than one hundred dollars (\$100) for registration in the registry under subsection (a); and
 - (2) a fee of not more than fifty dollars (\$50) per year to maintain the registration.







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- (c) The department shall use the revenue from the fees under subsection (b) for the operation of the registry under subsection (a).
- Sec. 9. (a) A requirement for compliance with surface water quality standards is incorporated into each permit under this chapter for the duration of the wetland activity.
- (b) Noncompliance with the permit is not a violation of water quality standards unless the quality of the water leaving the project area is impaired.

SECTION 37. IC 13-18-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 23. Indiana Wetlands Mitigation Bank Program

- Sec. 1. The bank program is established to promote the restoration, creation, or enlargement of wetlands that may be used as mitigation credits to offset losses of regulated wetlands occurring as a result of development projects.
- Sec. 2. (a) Mitigation credits acquired from owners of wetlands registered in the bank under this chapter may be used to provide compensatory mitigation for projects at any location in Indiana involving a discharge of fill materials into:
 - (1) a state regulated wetland; or
 - (2) if the mitigation credits meet applicable eligibility criteria under federal law, a CWA wetland.
- (b) The application of mitigation credits acquired under this chapter to compensatory mitigation needs associated with a project involving the discharge of fill materials into a state regulated wetland must be consistent with the following:
 - (1) The mitigation credits may be applied regardless of the relative locations of the wetland in the bank on which the credits are based and the state regulated wetland to be filled.
 - (2) The ratio of mitigation credits to the acreage of state regulated wetland to be filled must be:
 - (A) one to one (1:1) if the mitigation credits are based on a wetland of the same general type as the state regulated wetland to be filled;
 - (B) three to one (3:1) if the state regulated wetland being filled is a Category III wetland; or
 - (C) one and one-half to one (1.5:1) in all other cases.
- (c) For purposes of subsection (b)(2), the general wetland types are:

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- (2) scrub/shrub wetlands; and
- (3) forested wetlands.
- (d) Any additional conditions determined by the board in rules adopted under subsection (f) must be reasonable, necessary, and consistent with this chapter.
- (e) The department shall administer the bank program in accordance with this chapter.
- (f) The board shall adopt procedural rules under IC 4-22-2 and IC 13-14 not later than December 1, 2004, to facilitate:
 - (1) the administration of the bank; and
 - (2) transactions involving mitigation credits for wetlands registered with the bank;

consistent with this chapter. Implementation of this chapter may not be delayed while rules are being developed by the board under this subsection.

- Sec. 3. (a) A wetland must be registered with the bank before mitigation credits based on the wetlands may be sold for use under this chapter. Wetlands that may be registered with the bank include:
 - (1) volitional wetlands existing before the effective date of this chapter; and
 - (2) volitional wetlands restored, created, or enlarged after the effective date of this chapter.
- (b) To register a wetland with the bank, the owner of the wetland must submit a registration form to the department that:
 - (1) identifies the voluntary wetland by location and acreage;
 - (2) provides the name and address of the owner;
 - (3) states when the restoration, creation, or enlargement of the wetland began;
 - (4) represents that the wetland is not:
 - (A) a state regulated wetland; or
 - (B) a CWA wetland;
 - (5) includes a wetlands delineation report that describes:
 - (A) the type of the wetland;
 - (B) the quality of the wetland, taking into consideration its age, type, and hydrogeologic setting; and
 - (C) the expected stability of the wetland; and
 - (6) includes a one (1) time registration fee in the amount of the lesser of:
 - (i) ten dollars (\$10) per acre; or
 - (ii) one hundred dollars (\$100) per wetland.
 - (c) The department shall provide a form for registration of

wetlands with the bank.

- (d) The department may refuse to register a wetland proposed for the bank if:
 - (1) the quality of the wetland is not reasonably consistent with its age, type, and hydrogeologic setting; or
 - (2) the wetland's features and quality are not stable.
 - (e) The department shall:
 - (1) give written notice of its refusal to register a wetland in the bank to the person that submitted the registration form for the wetland not later than ninety (90) days after the department's receipt of the registration form; and
 - (2) support its refusal with a statement of reasons.

If notification of a refusal to register a wetland is not provided as described in this subsection, a wetland for which a registration form is submitted to the department in accordance with this section is considered to be registered in the bank.

- (f) A property owner may notify the department of intent to register a wetland with the bank before restoration, creation, or enlargement of the wetland.
- (g) The owner of a wetland that has been registered with the bank may cancel the registration and withdraw the wetland from the bank at any time before mitigation credits are sold under this chapter on the basis of the registered wetland.
- Sec. 4. (a) A person may acquire wetlands mitigation credits to satisfy compensatory mitigation needs by the purchase of credits at market price from an owner of wetlands acreage registered in the bank. The mitigation credits may be used to provide compensatory mitigation for projects involving a discharge of fill materials into:
 - (1) a state regulated wetland; or
 - (2) if the credits satisfy federal criteria for mitigation banks, a CWA wetland.
- One (1) unit of credit corresponds to one (1) acre of registered wetlands. Fractional credits may be purchased.
- (b) A person that purchases wetlands mitigation credits under this section shall do the following:
 - (1) Not later than five (5) days after the date of purchase, give the department a notice of the purchase in writing that includes the following:
 - (A) The name and address of the purchaser.
 - (B) The name and address of the seller.
 - (C) The amount of credits purchased.







- (D) The registration number and location of the registered wetland corresponding to the credits purchased.
- (E) The purchase price.
- (2) Pay a fee of twenty-five dollars (\$25) to the department with respect to each sale of credits of any amount based on a wetland registered with the bank.
- (c) A registered wetland that is the basis of a sale of mitigation credits under subsection (a) is reclassified as a state regulated wetland when the credits sold correspond to the entire acreage of the registered wetland.
- (d) If the sale of credits involves less than the total acreage of the registered wetland:
 - (1) the fraction of the acreage of the registered wetland not committed to a sale of credits remains available for future sale of mitigation credits; and
 - (2) the wetland is reclassified as a transitional registered wetland.
- (e) A transitional registered wetland is reclassified as a state regulated wetland when the cumulative credits sold with respect to the transitional registered wetland correspond to the entire acreage of the wetland.
- (f) No action by the department is required to effectuate the reclassification of a wetland under this section.
- (g) A wetland may not remain in transitional registered wetland status for more than ten (10) years. A transitional registered wetland is reclassified as a state regulated wetland at the end of the ten (10) year period beginning on the date of the initial sale of credits based on the wetland if the full number of potential mitigation credits corresponding to the transitional registered wetland is not sold by the end of that period. If a wetland has been reclassified as a state regulated wetland under this subsection, the owner of the wetland property may continue to sell the credits corresponding to the wetland that remain unsold at the time of the reclassification.
- (h) A person that has purchased mitigation credits under this section but has not applied the credits to compensatory mitigation requirements for a wetlands development project may resell some or all of the credits to another person. If the owner of a registered wetland redeems mitigation credits previously sold to another person by repurchasing the credits, the amount of redeemed credits is restored to the remaining credit balance in the bank pertaining to the registered wetland.









- (i) Each owner of a registered wetland shall provide to the department not later than March 1 of each year a summary of transactions involving credits in the registered wetland that occurred during the preceding calendar year.
- (j) The department shall maintain records on each wetland registered in the bank that include:
 - (1) the acreage and location of the wetland;
 - (2) the cumulative number of mitigation credits sold on the basis of the registered wetland;
 - (3) the remaining balance of credits available for sale attributable to the registered wetland;
 - (4) the date of each sale of mitigation credits and the number of credits sold; and
 - (5) the name and address of the current owner of each mitigation credit sold on the basis of the registered wetland.

SECTION 38. IC 13-19-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The board consists of thirteen (13) fourteen (14) members as follows:

- (1) The following ex officio, **nonvoting** members:
 - (A) The commissioner of the state department of health.
 - (B) The director of the department of natural resources.
 - (C) The lieutenant governor.
- (2) The following ten (10) members, who shall be appointed by the governor based on recommendations from representative constituencies:
 - (A) One (1) representative of agriculture.
 - (B) One (1) representative of manufacturing.
 - (C) One (1) representative of environmental interests.
 - (D) One (1) representative of labor.
 - (E) One (1) representative of local government.
 - (F) One (1) health professional who holds a license to practice in Indiana.
 - (G) One (1) representative of small business.
 - (H) One (1) representative of the general public, who cannot qualify to sit on the board under any of the other clauses in this subdivision.
 - (I) One (1) representative of the solid waste management industry.
 - (J) One (1) representative of the solid waste management districts.
- (3) One (1) nonvoting advisory member who:
 - (A) is an economist; and



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(B) shall be appointed by the governor.

(b) An individual appointed under subsection (a)(2) must possess knowledge, experience, or education qualifying the individual to represent the entity the individual is being recommended to represent.

SECTION 39. IC 13-19-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. Not more than five (5) six (6) of the appointed members of the board may be members of the same political party.

SECTION 40. IC 13-19-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 8. Seven (7) Six (6) members of the board four (4) of whom must be appointed members of the board, constitute a quorum.

SECTION 41. IC 13-19-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 9. The governor shall annually select:

- (1) one (1) of the ten (10) appointed members of the board to serve as chairman; and
- (2) another of the appointed members of the board to serve as vice chairman.

SECTION 42. IC 13-19-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) The board shall select from a list of three (3) qualified persons recommended by the governor, contract with:

- (1) an individual who:
 - (A) is an independent third party; who and
 - **(B)** is not an employee of the state;
- (2) a business firm; or
- (3) a legal firm;

to serve as technical secretary of the board.

- (b) During the interim between meetings of the board, The department technical secretary shall do the following:
 - (1) Handle correspondence.
 - (2) Make or arrange for investigations and surveys.
 - (3) Obtain, assemble, or prepare reports and data as directed by the board.
 - (c) The technical secretary shall:
 - (4) Review all materials prepared for the board by the department to make any necessary revisions.
 - (5) Serve as a hearing officer as directed by the board.
 - (6) Convene and lead meetings to discuss matters pending before the board.
 - (7) Initiate and manage rulemaking efforts in cooperation

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with the department.

- (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the technical secretary.
- (d) The technical secretary is not a voting member of the board. SECTION 43. IC 13-19-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. (a) The board may select from a list of three (3) qualified persons recommended by the governor, contract with:
 - (1) an individual who:
 - (A) is an independent third party; who and
 - **(B)** is not an employee of the state; **or**
 - (2) a legal firm;

to serve as legal counsel.

- **(b)** The legal counsel shall do the following:
 - (1) Advise the board on legal matters or proceedings arising from the exercise of the board's duties.
 - (2) Review all materials prepared for the board by the **technical secretary and the** department for legal accuracy and sufficiency and direct the **technical secretary and the** department to make any necessary revisions.
- (b) (c) Provisions of this chapter concerning terms of appointment, vacancies, and compensation of appointed board members apply to the legal counsel. The legal counsel is not a voting member of the board.

SECTION 44. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2003]: IC 13-17-2-6; IC 13-18-1-4; IC 13-19-2-4.

SECTION 45. [EFFECTIVE JULY 1, 2003] (a) The definitions in IC 13-11-2, as amended by this act, apply throughout this SECTION.

- (b) Before September 1, 2003, the department shall develop and present to the water pollution control board a policy or statement under IC 13-14-1-11.5 that does the following:
 - (1) Requires, consistent with IC 13-18-22, as added by this act, the filing of an application with the department for an individual permit for wetland activity that occurs:
 - (A) after June 30, 2003; and
 - (B) before the effective date of the rules adopted under:
 - (i) IC 13-18-22-4; and
 - (ii) IC 13-18-22-6;

both as added by this act.

(2) With respect to an application under subdivision (1), establishes:

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- (A) the factors the department will consider in reviewing the application;
- (B) procedures for:
 - (i) filing of applications;
 - (ii) action by the department; and
 - (iii) appeals of actions by the department; and
- (C) the period not to exceed one hundred twenty (120) days within which the department must act.
- (3) Establishes the attributes of categories of isolated wetlands to which the filing requirements of subdivision (1) apply that are consistent with the following:
 - (A) For a Category I wetland, characterized by:
 - (i) hydrologic isolation;
 - (ii) low species diversity;
 - (iii) a predominance of nonnative species, including greater than fifty percent (50%) areal cover for vegetative species;
 - (iv) no significant habitat or wildlife use; and
 - (v) limited potential to achieve beneficial wetlands functions.
 - (B) For a Category II wetland, characterized by:
 - (i) domination by native species but generally without the presence of, or the habitat for, rare, threatened, or endangered species; and
 - (ii) degradation, but with reasonable potential for reestablishing wetlands functions.
 - (C) For a Category III wetland, characterized by:
 - (i) high levels of diversity;
 - (ii) high proportion of native species; and
 - (iii) high functional values.
- (4) Establishes, consistent with IC 13-18-22, as added by this act, criteria for general permits:
 - (A) comparable to those addressed by nationwide permits under Section 404 of the Clean Water Act; and
 - (B) for wetland activity affecting:
 - (i) Category I wetlands; and
 - (ii) Category II wetlands;

smaller than one-half (1/2) acre.

- (5) Addresses any other matter the department considers necessary to administer the process described in this subsection:
 - (A) after June 30, 2003; and

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- (B) before the effective date of the rules adopted under:
 - (i) IC 13-18-22-4; and
 - (ii) IC 13-18-22-6;

both as added by this act.

- (c) The department's policies or statements under subsection (b) must, to the greatest extent possible, be consistent with IC 13-18-22, as added by this act.
- (d) The department shall, before November 1, 2003, and again before November 1, 2004, report to the environmental quality service council on the progress of:
 - (1) the development of the policies or statements under subsection (b); and
 - (2) the adoption of rules under:
 - (A) IC 13-15-1-2; and
 - (B) IC 13-18-22.
 - (e) The following expire September 1, 2005:
 - (1) The department's statement or policy under subsection (b).
 - (2) This SECTION.

SECTION 46. [EFFECTIVE UPON PASSAGE] (a) The environmental quality service council shall do the following:

- (1) Monitor the implementation of this act.
- (2) Review the role of the department of environmental management with respect to action on requests under section 401 of the Clean Water Act (33 U.S.C. 1341) for certifications concerning projects subject to permit requirements under section 404 of the Clean Water Act (33 U.S.C. 1344), and recommend whether statutory direction is appropriate or necessary in defining that role.
- (3) Complete its consideration of the options for statutory definition of "private pond" as applied in the definition of "waters" in IC 13-11-2-265, and recommend an option, including a statement of rationale.
- (4) Evaluate the tensions between existing programs for wetlands protection and for local drainage, and recommend principles and policies for ameliorating those tensions, taking into consideration the rationale and objectives for both programs.
- (5) Recommend a framework for overall state policy on wetlands to implement the 1996 Indiana Wetland Conservation Plan with goals, objectives, and responsibilities, including recommendations on:

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- (A) as a long term strategy, the types and functions of wetlands that are valued in particular geographic areas; and
- (B) the means for restoring, maintaining, and protecting wetlands, including identification of agencies to be involved and the incentives to be offered.
- (6) Recommend:
 - (A) composition;
 - (B) responsibilities;
 - (C) staffing; and
 - (D) funding;

of a permanent state wetlands conservation council.

- (7) Evaluate the usefulness of a statute to create an Indiana wetland conservation commission for the purpose of coordinating state agency implementation of the state wetland policy.
- (8) Submit its final report on the matters described in the preceding four subdivisions before November 1, 2003, to:
 - (A) the governor; and
 - (B) the executive director of the legislative services agency.
- (b) The environmental quality service council shall:
 - (1) conduct an ongoing evaluation during the period from July 1, 2003, to November 1, 2006, of the implementation of:
 - (A) the permit program for wetlands under IC 13-18-22; and
 - (B) the Indiana wetlands mitigation bank program under IC 13-18-23:

both as established under this act;

- (2) recommend any adjustments to either program referred to in subdivision (1) that are considered advisable to improve the operation and effectiveness of the programs, consistent with the purpose of providing an efficient permitting process and enhancing the attainment of an overall goal of no net loss of wetlands; and
- (3) submit its final report on the matters described in this subsection before November 1, 2005, to:
 - (A) the governor; and
- (B) the executive director of the legislative services agency.
- (c) This SECTION expires November 1, 2006.



SECTION 47. An emergency is declared for this act.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1221 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 11, nays 2.

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